

S. Subbiah Vs. State by P. Paulsingh Sub-Divisional Magistrate and Personal Assistant (Urban Land Tax) to the Collector Chennai

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Court : Chennai

Decided On : Oct-29-2015

Judge : B. Rajendran

Appeal No. : Criminal Revision Case No. 196 of 2010 & M.P. Nos. 1 & 2 of 2010

Appellant : S. Subbiah

Respondent : State by P. Paulsingh Sub-Divisional Magistrate and Personal Assistant (Urban Land Tax) to the Collector Chennai

Judgement :

(Prayer: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order dated 02.02.2010 made in CrI.M.P.No.132 of 2009 in S.C.No.251 of 2009 on the file of the Additional District and Sessions Judge, Fast Track Court No.V, Chennai.)

1. The petitioner/1st accused was incriminated for the charges under Sections 342, 302, 202 read with 34 IPC alleging that between 15.12.1991 to 17.12.1991, accused Nos.1 to 3 with common intention wrongfully confined the deceased Prakasam at P.4, Basin Bridge Police Station and inflicted 67 injuries on him, thereby, caused his death. A special report along with the death report was sent by the respondent on 18.12.1991 and on the basis of which, a case was

registered. In that connection, the Collector of Chennai, ordered to conduct enquiry under Police Standing Order 145 (for short, PSO 145 ?). By virtue of the enquiry, the then Additional District Magistrate and Personal Assistant (Urban Land Tax) to the Collector has examined the relevant persons and recorded their versions and submitted his report on 07.03.1992. The Collector accepted the findings of the Enquiry Officer and has sent a report with recommendation of the Collector to the Government. Thereafter, the Government passed a Government Order in G.O.Ms.No.326 Public (Law and Order) Department, dated 02.04.1993 according sanction to prosecute the accused, besides to initiate departmental action. On 20.01.2007, a private complaint was preferred by the respondent before the Chief Judicial Magistrate, Egmore and after the complaint was enquired into by the learned Chief Metropolitan Magistrate, Chennai, and it was taken on file and committed to the Sessions Court for framing of charges. The petitioner/accused No.1 has filed a petition seeking to discharge from the criminal case. The said petition was dismissed by order dated 02.02.2010 made in CrI.M.P.No.132 of 2009 in S.C.No.251 of 2009 on the file of the Additional District and Sessions Judge, Fast Track Court No.V, Chennai. Aggrieved against the same, the present Criminal Revision Case is filed. The second accused has filed CrI.R.C.No.167 of 2010, but, the same has been withdrawn today.

2. Mr.A.Kalaiselvan, learned counsel for the petitioner would submit that the case of the 1st accused is that he was the Sub-Inspector of Police at the time of the occurrence. He has been wrongly implicated in the case for the alleged torture and murder of one Prakasam, who was arrayed as an accused in a case and who has been arrested and kept in custody. He would further submit that the petitioner is in no way connected with the offence. He would further add that the alleged occurrence is said to have taken place on 17.12.1991 and FIR was lodged in Cr.No.445 of 1991 on 18.12.1991. The RDO enquiry emanated for the death of person, as he was supposed to have died during custody. The RDO enquiry commenced on 18.12.1991. The RDO has filed his report on 07.03.1992. Thereafter, on 02.04.1993, the Government directed the authorities to take necessary action pursuant to the RDO report, but, thereafter, no steps were taken and only in the year 2007, a private complaint was given. He would further add that for the occurrence that has taken place in 1991, a private complaint was given

only in the year 2007, thus, there has been an inordinate delay of 16 years in giving the private complaint. Since the private complaint has not been lodged in accordance with the mandatory procedure prescribed under PSO 145, the delay is not attributable to the accused and therefore, the petitioner is entitled for discharge and hence, he has filed a petition before the Trial Court seeking to discharge, but, unfortunately, the said petition has not been considered in a proper perspective and was ultimately dismissed. The second ground which has been raised by the petitioner is that the PSO 145 has no legal force, because, it is the RDO, who has conducted the enquiry. Any further action alleged to have been taken is per se illegal. Therefore, the private complaint becomes ineffective and it is not in accordance with law. He would further contend that in the alternative, if this Court comes to the conclusion that PSO 145 has legal force, still the procedure as contemplated under PSO 145 has not been followed and it is only the RDO, who has enquired the matter. As per PSO 145, it is only in the Moffusil area, the RDO can enquire into the matter, whereas, in the city only, under the direction of Chief Metropolitan Magistrate, any Magistrate has to enquire, therefore, there is a preliminary mistake in conducting enquiry. Under these circumstances, the RDO enquiry itself is wrong and therefore, the private complaint cannot be proceeded further. Lastly, he would contend that even though the Government Order in G.O.Ms.No.326 was passed on 02.04.1993, according sanction to prosecute the accused, for the inordinate delay, there was no proper explanation, therefore also, the petitioner has to be discharged for the alleged offences. He would further contend that the 1st accused has already retired from service and that challenging the order of punishment passed in P.R.No.34 of 1993, dated 09.02.2000, as per which, he has been imposed with punishment of reduction in time scale of pay by three stages for three years with cumulative effect, the 1st accused has filed O.A.No.2117 of 2000 before the Tamil Nadu Administrative Tribunal, Chennai and the Administrative Tribunal has set aside the said punishment, but, the 1st accused has now been unnecessarily harassed. The petitioner/1st accused is now aged 70 years old. There is no point in getting on with the trial and therefore, the order passed by the Trial Court is wrong.

3. Mr.V.Arul, the Government Advocate appearing for the respondent would submit that the scope of revision under Section 397 Cr.P.C. in respect of

discharge is very limited. First of all, the petitioner has not challenged the Government Order in G.O.Ms.No.326 according sanction to prosecute the accused way back in the year 1993. Till date, the Government Order has not been challenged at all. Secondly, as far as the proceeding under PSO 145, is concerned, this Court and Supreme Court has clearly held that PSO 145 has legal force. Secondly, once the petitioner has participated in the RDO enquiry, he has waived his right. Further, only after the report of RDO, it is only the Chief Metropolitan Magistrate, who has taken cognizance of the matter and enquired into the matter and thereafter, committed the matter to Sessions Court and therefore, the argument that there is violation under PSO 145 does not arise. He would rely on the judgment of the Hon'ble Apex Court reported in (2010) 9 Supreme Court Cases 368, SAJJAN KUMAR vs. CENTRAL BUREAU OF INVESTIGATION, to substantiate his contention that mere delay even inordinate delay cannot be a reason to discharge the accused. He would further submit that no doubt in this case there was a delay, which is evident from the fact that the enquiry report was given in the year 1992, but, the private complaint was lodged only in the year 2007. But, this cannot be gone into at this point of time, because, he has not challenged the Government Order. The Trial Court has taken into consideration the evidence as available as to whether a prima facie case has been made out or not. It is the prima facie case that the deceased sustained 67 injuries. The evidence of wife/L.W.1, is clear that on 15.12.1991, the police officials has taken him to the police station. On the same day, when she rushed to the police station she found him alive at 9.00 p.m. The next day, i.e., on 16.12.1991, when she attempted to visit him, she was not permitted to see him by the police officials even in the morning as well as in the evening. On 18.12.1991, she was informed by a person that her husband was serious. She rushed to the Police Station, where she was informed that her husband was admitted in the General Hospital. When she went to the hospital she found the dead body of her husband and only to circumvent all these things, they created an impression as if that on 17.12.1991 at about 9.45 p.m., when the petitioner herein, who was the Sub-Inspector of Police, along with other police officials, attempted to arrest the deceased at the Basin Bridge, he on seeing the Police Party attempted to run away, fell down and sustained injuries, as a result of which, he died. But, these are all things, the

genuineness of which can be gone into only at the time of trial. The evidence available can be looked into and that was done and rightly the Trial Court has dismissed the petition seeking to discharge, which cannot be gone in detail at this point of time in a case under revision. Above all these things, the learned Government Advocate would contend that as rightly pointed out the scope of revision under Section 397 Cr.P.C. in respect of discharge is very limited, hence, the contention of the petitioner that he is a retired person and he is aged 70 years, these things cannot be taken into consideration. He would further add that since, accused No.2 had already withdrawn the revision and the accused No.3 had already died, there is no impediment for the Trial Court to get on with the trial of the case of the petitioner.

4. Heard both sides. By consent, this Criminal Revision Case itself is taken up for final disposal.

5. The main contention raised by the learned counsel for the petitioner is the inordinate delay. From a cursory perusal of the dates as mentioned by the petitioner, it is seen that the occurrence took place on 17.12.1991 and FIR was lodged in Cr.No.445 of 1991 on 18.12.1991. The RDO enquiry was emanated for the death of person, as he was supposed to have died during custody. The RDO enquiry commenced on 18.12.1991. The RDO has filed his report on 07.03.1992. Thereafter, on 02.04.1993, the Government directed the authorities to take necessary action pursuant to the RDO report. In the year 2007, a private complaint was given. It is the evidence of wife/L.W.1 that on 15.12.1991, the police officials has took him to the police station. On the same day, when she rushed to the police station she found him alive at 9.00 p.m. The next day, i.e., on 16.12.1991, when she attempted to visit him, she was not permitted to see him by the police officials even in the morning as well as in the evening. On 18.12.1991, she was informed by a person that her husband was serious. She rushed to the Police Station, where she was informed that her husband was admitted in the General Hospital. When she went to the hospital she found the dead body of her husband. The contention raised by the petitioner/accused No.1 is that on 17.12.1991 at about 9.45 p.m., when the petitioner herein, who was the Sub-Inspector of Police, along with other police officials, attempted to arrest the deceased at the Basin Bridge, he

on seeing the Police Party attempted to run away, fell down and sustained injuries, as a result of which, he died. But, according to the evidence of the Doctor, the deceased has sustained 67 injuries in the body. A person if he falls down will he sustain such huge number of injuries. But, these are all merits of the matter, we cannot decide at this point of time.

6. Now the main question to be decided in this revision is, whether there is a delay. Admittedly, there is a delay and the delay is an inordinate one. The RDO has filed his report on 07.03.1992, in which, he has categorically stated that there is a mistake on the part of the authorities, there is violation, which calls for an enquiry and trial. At this juncture, it is pertinent to point out immediately after the occurrence, an independent Commissioner was directed to enquire into the matter, conveniently, he filed a report stating that there is no dereliction of duty. There is no custodial death. The Government being not satisfied and on further adjudication, the RDO enquiry continued and the RDO after taking various aspects came to the ultimate conclusion that the death is because of the custodial violation. With this background, in the interregnum period, the petitioner goes to the Administrative Tribunal seeking to set aside the order of punishment passed in P.R.No.34 of 1993, dated 09.02.2000, as per which, he has been imposed with punishment of reduction in time scale of pay by three stages for three years with cumulative effect. The Administrative Tribunal, by order 27.06.2003 has set aside the said punishment. As rightly pointed out by the learned Government Advocate it is for the Administrative Tribunal to decide insofar as to the criminality of the case. The petitioner, thereafter continued in service and thereafter has retired from service. In the mean while, there was a delay to a certain extent. The petitioner, being a person in the Police Department, no serious steps have been taken against him. But, the Government in its letter dated 02.04.1993 has stated that after enquiry, it is clear that the delinquent viz., the petitioner/Sub-Inspector of Police caused the custodial death of Prakasam by beating him with lathy and that the delinquent was assisted by two of his subordinates viz., Thirugnanasambandam, Head Constable and Varadaraj, Constable. Infact, as per the orders of the Government in G.O.Ms.No.326, Public (Law and Order-II) A Department dated 02.04.1993, the charges were framed against the delinquent by the Commissioner of Police on 08.07.1993. The delinquent acknowledged the

charge on 01.09.1993. The Deputy Commissioner of Police was appointed as an Enquiry Officer and 23 witnesses were examined on the side of the Department. Thereafter, the petitioner was discharged from the enquiry. Thereafter, in the year 2007, the private complaint was filed by the complainant. Taking into consideration the entire substance and merits of the case, the Chief Metropolitan Magistrate, Egmore, Chennai, has taken the complaint on file in 2007 and thereafter, the discharge petition was filed, but, the same was dismissed.

7.To decide as to whether the delay can be a reason to set aside or discharge the accused No.1 from the charge, at this juncture, it is relevant to refer to the judgment of the Hon'ble Apex Court reported in (2010) 9 Supreme Court Cases 368, Sajjan Kumar vs. Central Bureau of Investigation, wherein, the delay aspect has been considered by the Hon'ble Apex Court in detail and in paragraph Nos. 31,32, 37, 38 and 39, it was held as follows:-.

31. The learned Senior Counsel appearing for the appellant further submitted that because of the long delay, the continuation of the prosecution and framing of charges merely on the basis of certain statements made after a gap of 23 years cannot be accepted and according to him, it would go against the protection provided under Article 21 of the Constitution.

32. Mr.Lalit heavily relied on SCC para 20 of the decision of this Court in Vakil Prasad Singh v. State of Bihar, (2009) 3 SCC 355, which reads as under: (SCC pp.361-62)

20. For the sake of brevity, we do not propose to reproduce all the said propositions and it would suffice to note the gist thereof. These are:

(Abdul Rehanman Antulay v. R.S.Nayak, (1992) 1 SCC 225 (SCC pp. 27073, para 86)

(i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily ;

(ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial;

(iii) in every case, where the speedy trial is alleged to have been infringed, the first question to be put and answered is “ who is responsible for the delay ;

(iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on “ what is called, the systemic delays ;

(v) each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of the accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case;

(vi) ultimately, the court has to balance and weigh several relevant factors “balancing test' or 'balancing process' “ and determine in each whether the right to speedy trial has been denied;

(vii) ordinarily speaking, where the court comes to a conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial;

(viii) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint ;

(ix) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court

entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in the High Court must, however, be disposed of on a priority basis. ?

...

37. Though delay is also a relevant factor and every accused is entitled to speedy justice in view of Article 21 of the Constitution, ultimately it depends upon various factors/reasons and materials placed by the prosecution. Though Mr.Lalit heavily relied on para 20 of the decision of this Court in Vakil Prasad Singh vs. State of Bihar, 92009) 3 SCC 355, the learned Additional Solicitor General, by drawing our attention to the subsequent paragraphs i.e., 21, 23, 24, 27 and 29 pointed out that the principles enunciated in Abdul Rehman Antulay Case are only illustrative and merely because of long delay the case of the prosecution cannot be closed.

38. Mr.Dave, learned Senior Counsel appearing for the intervenor has pointed out that in criminal justice a crime never dies for which he relied on the decision of this Court in Japani Sahoo vs. Chandra Sekhar Mohanty, (2007) 7 SCC 394. In SCC para 14, C.K.Thakker, J. speaking for the Bench has observed: (SCC p.401)

14.... It is settled law that a criminal offence is considered as a wrong against the State and the Society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a court of law has no power to throw away prosecution solely on the ground of delay. ?

(emphasis in original)

39. In the case on hand, though delay may be a relevant ground, in the light of the materials which are available before the Court through CBI, without testing the same at the trial, the proceedings cannot be quashed merely on the ground of delay. As stated earlier, those materials have to be tested in the context of prejudice to the accused only at the trial. ?

8. As rightly pointed out by the Hon'ble Apex Court, the proceedings cannot be quashed merely on the ground of delay. The materials if at all available as to whether the petitioner has not involved in the offence; whether the deceased

person was previously arrested on 15.12.1991 or not and whether he was taken to custody from that date, these are all matters, which can be gone into only after detailed enquiry. Of course, the petitioner will have sufficient opportunity to put forward his case and also the defence, which he has raised herein, but, delay alone cannot be a reason to discharge the petitioner.

9. Similarly, in the case of a proceedings under PSO 145, time and again this Court as well as the Hon'ble Apex Court has held that 145 proceedings is accepted under law and it is a reasonable and correct procedure and it is lawful. Infact, it is in the City, the Chief Metropolitan Magistrate is the competent authority to enquire into the matter and in the Mofussil, the authority is vested with the RDO. The petitioner has participated in the RDO enquiry, he has availed his right and he has not objected for the same at the earliest point of time, therefore, now, it is not open for him to object for the same and to say that the enquiry itself is wrong. Further, only after the report of RDO, it is only the Chief Metropolitan Magistrate, who has taken cognizance of the matter and enquired into the matter and thereafter, committed the matter to Sessions Court and therefore, the argument that there is violation under PSO 145 does not arise.

10. Lastly, as regards the contention of the learned counsel for the petitioner that the Government has no power to launch the prosecution and that the Government Order is not legally correct; that cannot be questioned at this point of time. It is not the case, where the Court is dealing with the matter under Section 482 Cr.P.C., to quash the proceedings, therefore, that question cannot be raised at this point of time, whereas, a cursory reading of the order of the Court below, it is seen that a petition was filed before the Trial Court only seeking to discharge and the Trial Court, in its order, has categorically extracted the evidence as it is available and has ultimately come to a conclusion that a prima facie case has been made out and thereafter, the accused No.1 cannot be discharged at this point of time and the trial has to go and after fullfledged trial only, it can be decided. I find no reason to interfere with the reasoned order of the Trial Court dated 02.02.2010. This Criminal Revision Case is dismissed.

11. At this point of time, it is suffice to state that the petitioner/accused No.1 will be given sufficient opportunity to put forward his case and taking into consideration of the fact that an inordinate delay has taken place, the learned Additional District and Sessions Judge, Fast Track Court No.V, Chennai, shall take ample efforts to dispose of the Sessions Case in S.C.No.251 of 2009 as expeditiously as possible. At this juncture, the learned counsel appearing for the petitioner pleaded before this Court that taking into consideration the age of the petitioner his personal appearance may be dispensed with before the Trial Court. Hence, it is made clear that the personal appearance of the petitioner in person before the Trial Court during the course of trial is dispensed with whenever required and he is permitted to appear through his counsel, except on all important dates when his personal appearance is required and he shall co-operate with the trial.

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